

Scottish National Investment Bank Bill

Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Scottish National Investment Bank Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. The Bill will place a duty on Scottish Ministers to establish the Bank as a public limited company and give Ministers the necessary powers to capitalise the Bank. The Bill also mandates what is to be in the Bank's Articles of Association (the constitution of it as a public limited company) and the circumstances in which certain provisions can be modified.

3. The Bill provides that the main object of the Bank will be giving financial assistance to commercial activities for the purpose of promoting or sustaining economic development or employment in Scotland. The Bill also gives Scottish Ministers the power to set strategic missions for the Bank, namely socio-economic challenges that the Bank is to seek to address through its investments.

Rationale for subordinate legislation

4. The delegated powers in this Bill are limited in nature, reflecting the fact that the key aspects of the object and operation of the new body are set out on the face of the Bill.

This document relates to the Scottish National Investment Bank Bill (SP Bill 43) as introduced in the Scottish Parliament on 27 February 2019

Delegated Powers

Section 23 – Ancillary provision

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative if they add to, replace or omit any part of the text of an Act but otherwise are subject to the negative procedure

Provision

5. Section 20 provides the Scottish Ministers with a power to make any ancillary provisions which are appropriate for the purposes of, or in connection with, or for giving full effect to the Act resulting from the Bill or any provision made under it.

Reason for taking power

6. It is common for Acts to give Ministers a power to make ancillary provision. Ancillary provision may be needed in a variety of circumstances. These could include making further amendments to other primary legislation (beyond that already dealt with in the schedule) to ensure it applies to the Bank and making transitional or transitory provisions as part of setting up the Bank. It is not possible to predict precisely what ancillary provision may prove to be needed (if any) for the purposes of, or in connection with, or for giving full effect to, the Bill passed by Parliament. That is why it is prudent to take a power to address any unforeseen risks to implementing what Parliament has enacted. Without a power to make ancillary provision by regulations, it may be necessary to come back to Parliament for further primary legislation to deal with a matter that needs to be addressed if the Bill, in its final form having been passed by Parliament, is to serve its intended purpose. That would not be an effective use of the Parliament's, or the Government's, resources.

Choice of procedure

7. The choice of affirmative procedure where amendments are made to primary legislation reflects the significance of any amendments and provides the Parliament with the opportunity for close scrutiny of what is proposed. In other circumstances, for example when using the power for

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transitional or transitory provisions as part of setting up the Bank, the use of ancillary provision would be subject to negative procedure.

Section 24 – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: laid, no procedure

Provision

8. Section 24 provides Scottish Ministers with powers to commence provisions of the Act by regulations, other than sections 23 to 25. The power may be exercised, in accordance with subsection (3), to make different provision for different purposes.

Reason for taking power

9. The power to make commencement regulations is required in order to appropriately manage the coming into force of the Act and the creation of the new body under separate companies legislation.

Choice of procedure

10. In accordance with section 30 of the Interpretative and Legislative Reform (Scotland) Act 2010, regulations made under this section would be laid before the Scottish Parliament as soon as practicable after the legislation is made. The regulations would not be subject to affirmative or negative procedure.

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